THE RITUAL OF RIGHTS IN JAPAN

Law, Society, and Health Policy

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CHAPTER ONE

RECONSIDERING RIGHTS IN JAPANESE LAW AND SOCIETY

This book challenges the belief that the assertion of rights is fundamentally incompatible with Japanese legal, political, and social norms. In doing so, it explores evidence in a variety of sociolegal arenas: in linguistic and conceptual predecessors to the Japanese word for "rights," *kenri*; in Japan's tradition of protest; in the growth during the late nineteenth century of the Movement for Freedom and Popular Rights; in the "new rights" movements of the 1960s and 1970s; and in contemporary policy disputes over AIDS and the definition of death. Analysis of each of these domains points to the same conclusion; rights in Japan have been, and continue to be, asserted and fought over, if not always secured.

Many of the most erudite and influential commentators on Japan have reached very different conclusions. They argue that the persistence of premodern legal and political values in Japanese society has inhibited the articulation and emergence of rights.[1] Political analyst Karel van Wolferen writes that "[t]raditional attitudes, reinforced by contemporary practice, obstruct the establishment of an unambiguous concept of 'rights,'" and he dismisses the seriousness of groups that frame their arguments in the language of rights.[2] Susan Pharr, Harvard's Reischauer Professor of Japanese Studies, claims that "most Japanese continue to view the official ideology [postwar democracy and egalitarianism], with its linkage to a notion of individual rights, as basically 'Western,'" and goes on to argue that Japanese political culture is antithetical to an idea of rights.[3] Traditional Japanese scholarship has supported these views, emphasizing the disjuncture between

Japanese culture and rights,[4] sometimes dwelling on Marxist theories about the state control of rights.[5] Abe Haruo says that in the postwar era rights were "suddenly handed down from above," indicating that Japan was rights-less for most of its 2,000 year history.[6] Takayanagi Kenzō identifies a Japanese preference for mediation, and argues that it is in part the result of "the Japanese national character, that the Japanese people are less assertive of their rights than Anglo-Saxons or Germans . . ."[7]

Hyperbolic descriptions of a rights-laden United States have influenced scholars of Japanese law to describe a radical disjuncture between rights assertion in the United States and Japan. The University of Chicago's Leon Kass, for example, opines:

> It has been fashionable for some time now and in many aspects of American public life for people to demand what they want or need as a matter of rights. During the past few decades we have heard claims of a right to health or health care, a right to education or employment, a right to privacy (embracing also a right to abort or to enjoy pornography, or to commit suicide or sodomy), a right to clean air, a right to dance naked, a right to be born, and a right not to have been born. Most recently we have been presented with the ultimate new rights claim, a "right to die."[8]

Kass's critique of what he perceives of as an overindulgence in "the liberal – that is, rights-based – political philosophy and jurisprudence to which we Americans are wedded" coincides with the theme of Harvard Law School Professor Mary Ann Glendon's *Rights Talk: The Impoverishment of Political Discourse*. Glendon describes an America gorged on rights, with individuals unable or unwilling to control their rights assertions, and who are unburdened by a conception of a common good. Even worse, the people who inhabit Glendon's America have the most limited and crass understanding of rights:

> American rights talk is set apart by the way that rights, in our standard formulations, tend to be presented as absolute, individual, and independent of any necessary relation to responsibilities . . . we have observed a tendency to formulate important issues in terms of rights; a bent for stating rights claims in a stark, simple, and absolute fashion; an image of the rights-bearer as radically free, self-determining, and self-sufficient; and the absence of well-developed responsibility talk . . . and a consequent carelessness regarding the environments that human beings and societies require in order to flourish.[9]

While Kass and Glendon are harsh in their condemnation of American rights talk, they are not alone in considering the United States unique with regard to the frequency and vigor of rights assertion. Political scientists Stewart Scheingold and Michael McCann, for example, in their separate studies of rights, mobilization, and social change in the United States, both remark on the exceptional way in which rights function in American society.[10] R. Shep Melnick, discussing special education policy, cites a "peculiarly American" reliance on the orientation to and language of rights.[11] Starting with de Tocqueville, who observed that in America most public men were lawyers and legal discourse pervaded the culture, the so-called American obsession with law and rights has become an almost conventional wisdom.

Japanese scholars like University of Tokyo legal philosopher Inoue Tatsuo, and other prominent Japanese intellectuals, can hardly be faulted for accepting the views of their American colleagues and using them to construct a similarly unidimensional analysis of rights in Japan. Inoue, summing up the work of Glendon and others, bluntly states that "[T]he American people are well known for stressing the role of individual rights within society."[12] He offers a critique of Japan that explicitly builds on Glendon's view of the United States. In contrast to America's rights saturation, he sees Japan as barren:

> individual rights are an endangered moral species in our Land of Community. They are chronically endangered . . . We have an urgent need to save them because our human lives are now impoverished, devastated and even destroyed by the same moral environment that has been causing, and is caused by, their atrophy and suffocation.[13]

Glendon pleads for a greater sense of community in America; Inoue cautions about the tyranny of community. Inoue implores Japan to strengthen its commitment to individual rights; Glendon condemns the American infatuation with rights as a "caricature of our culture."

Conventional accounts of rights in the United States and Japan are similarly flawed. Recent sociolegal scholarship in the United States points to both qualitative and quantitative data indicating that the American obsession with litigation and rights has been vastly overstated.[14] In the United States, it turns out, there are surely people who are vigorous rights asserters, but so too many conflicts are settled without resort to rights. There has been little comparable rethinking of rights in Japan. Instead, without looking to countries in Europe or

Asia, where the frequency and tenor of rights assertion may be much like Japan, analysts of Japan have fixed on the perceived clamor of rights assertion in the United States. Against the artificially constructed landscape of a rights-obsessed America, they have constructed a myth that there is no rights assertion in Japan.

To better understand the contours of the alleged contrast between the United States and Japan, it is critical to distinguish between jurisprudential rights, cultural myths about rights,[15] and the strategic assertion of rights. Jurisprudentially, for something to be a right in the most fundamental legal meaning of the term, it must be guaranteed by a code or constitution and/or protected by a court – that is, it must be legally enforceable. In both the United States and Japan, there is much jurisprudential literature on precisely what claims should be treated as "rights," and how rights should be distinguished from a range of other legally protected interests. In neither country is there widespread agreement on the precise meaning of rights, nor on which rights should be protected.

Cultural myths about rights concern the relative importance attributed to rights in a particular society by popular and academic writers, as well as by laypersons. The power rights are imagined to possess, the frequency with which they are supposedly invoked, and how they are thought to define the identity of a people are the key components that fuel the creation of a myth about rights. In examining litigiousness in the United States, for example, an issue closely related to rights, Carol Greenhouse writes not about litigation itself, but about the interest Americans have in it. What animates her work is "the observation that many Americans are ready to believe in, almost to the point of insistence, their own allegedly litigious national character, even when evidence for this characterization is absent, ambiguous, or contradictory."[16] Just as Greenhouse notices a gap between Americans' perceptions of litigiousness and the actual amount of litigation in the United States, there is also a gap between the perception and reality of rights assertion in the United States, Japan, and elsewhere.

The strategic assertion of rights refers to what Stewart Scheingold calls "the politics of rights." It requires an analysis of how social actors use rights to frame, discuss, and debate issues relevant to social policy; paying attention to the language of such actors engaged in social movements, particularly the context and timing of rights assertion; determining the efficacy of invoking rights for mobilizing like-minded individuals; and evaluating the success of those who use rights in

pursuit of particular social ends. Concern with the strategic assertion of rights often supersedes questions about the jurisprudential nature of rights; even if an asserted "right" is not (yet) protected by courts or constitution, it may generate a fierce political struggle. The right to die, for example, was widely discussed and contested in the United States well before it was recognized, in part, by the courts.

In emphasizing sociolegal rather than jurisprudential aspects of rights in contemporary Japan, this book focuses on the interplay between cultural myths about rights and the strategic assertion of rights. Like the gap identified by Greenhouse between unspectacular litigation rates in the United States and beliefs among Americans that they are inherently litigious, the gap in Japan with regard to rights separates the cultural myths about rights – that rights are incompatible with Japanese culture, so that Japanese people will go to great lengths to avoid asserting a right to anything – from a more empirical or case approach that examines who asserts rights, why, and with what effect. Because the interplay between the myths about rights, the strategic use of rights assertion, and the legal and political outcomes of rights-related conflict varies over time and place, I refer to it as a ritual. It is the ritual of rights in Japan, illustrated in the battles over AIDS and the definition of death, that this book seeks to illuminate.

Rights in Japan do matter, but they exhibit differences from, and matter in different ways than, rights in the United States. Living in Japan and in daily contact with Japanese, one is aware of how rarely the word *kenri* (right) is used in daily conversation, even when there is an overt dispute that from an American perspective seems to involve rights. When individuals are angry, or feel cheated, or abused, they are likely to walk away, or to change the subject, or to act extraordinarily polite, rather than to claim that their rights have been aggrieved. Such behavior is not an indication that the parties fail to understand rights, but that rights are not an acceptable tool of one-on-one argument. It is a bad strategy to start talking about rights, because the other party will recoil, the relationship will be severely damaged, and the possibility of a fast or advantageous solution will vanish. Thus, the public, aggressive assertion of rights is reserved for particular types of conflicts, generally those in which the hope of continuing a superficially harmonious relationship between the parties has been abandoned, and the possibility for informal agreement is stalled.

I can support this observation with an array of anecdotal material, some from my own experience. Several weeks after I had (at the lessor's insistence) read every clause of an apartment rental contract, signed it, paid a deposit, and received the key, and only five days before moving in, the landlord appeared at my apartment with a large box of cookies and a formal apology because her cousin wanted to live in the space I had rented. Neither of us referred to the contract, nor the laws governing landlord–tenant relationships and rights. Both of us appealed for sympathy and understanding. We knew that the worst course of action would be to assert our rights and go to court. She offered me a different, less expensive apartment; I saved a substantial amount of rent.

On another occasion, I had an accident in a rental van. Unfortunately, the car that I hit was waiting at a red light, immobile. The other driver worked at an auto body repair shop, which explained his ability to immediately estimate the cost of repairing his company car at $700. Cash on the spot, he demanded, or we would have to call the police. If the police came, it would mean three or four hours making chalk marks on the street to determine the exact angle of my turn and estimate speed. There would be endless paperwork. In the end all would conclude that I had hit a stationary vehicle and had to pay. But the other driver also had better things to do. So we went to his shop, I apologized to his boss and gave him a ceremonial basket of fruit, and we settled on $200.

Neither of these incidents, had they occurred in the United States, would have led to court. Nor would the outcomes have been significantly different. But the choice of a strategy for engaging in the interaction – the repertoire of rituals and rhetoric – would have been distinctive. In the United States, I would have asserted my rights as a tenant, the landlord would have countered with the rights of property owners, and in the end we would have settled. Similarly, after hearing the sound of metal on metal, I would have gotten out of the car, but may not have apologized. He would have acted enraged and demanded my insurance information. I would have offered him $200. One important difference between rights assertion in Japan and the United States, therefore, is the selection of occasions to, or not to, assert them. There are many more occasions in Japan when it is better to be silent, or polite, or apologize, not because one is unaware of the legal rules, though

in some cases that too is true, but because one is more likely to reach a satisfactory solution.

How can one sensibly approach the study of rights in Japan when the definition of "rights" and the occasions for rights assertion in the United States and Japan may be so different? Take an example from an entirely different area. The meaning of dance to Webster and others is "to move with rhythmical steps or movement, usually to music." There is a good fit between that definition and the waltz, the polka, and even the monkey. It can reasonably be applied to jazz and modern dance, though experts may insist that the definition needs some fine-tuning. But what of Japanese *butoh*? There is often no music, movement is rarely rhythmical, and artists sometimes remain with their feet planted for long periods of time. Look in a Japanese dictionary, however, and the word "*butoh*" is translated as dance. Ask a Japanese performing artist, and they will tell you that *butoh* is dance. Go to a performance, and you will see an art form that looks like dance. It is neither sensible nor interesting to conclude that since *butoh* does not conform to Mr. Webster's definition of dance, there is no dance in Japan. For those who are interested in the art form called "dance," it would be much more illuminating to observe Japanese *butoh* and think about how it challenges and complexifies their idea of dance.

Like *butoh*, examining rights in Japan provides an opportunity to look beyond the familiar (though contested) Western terrain of jurisprudential approaches to rights, cultural myths about rights, and the strategic assertion of rights. By setting one's gaze upon Japan, one discovers that far from a nation barren in rights and rights assertion, both have a long history and a rich present. The sensible question about rights in Japan is not whether or not there are any. Rather, as with dance, the challenge is to critically examine the historical background of rights, and to look at contemporary instances of rights assertion to learn by whom rights are asserted, when, and with what impact.

Kawashima Takeyoshi, the godfather of the view that contemporary Japanese are unusually reticent about asserting their rights, discussed the values animating legal behavior in Japan and the West as part of a theory of Japanese modernization. In contrast to rights-based Western legal systems, where individuals assert rights without fear of social condemnation, Kawashima claimed that the Japanese legal system was

based on duties and lacked a concept of rights. Although in postwar Japan people continued to avoid courts and rights assertion, in Kawashima's view the gap between rights assertion and litigation in Japan and the West would narrow as the Japanese legal system became more modern. Kawashima presented his theory about Japanese law and legal behavior in *Nihonjin no Hō Ishiki* [The Legal Consciousness of the Japanese], widely acknowledged to be a masterpiece of postwar sociolegal scholarship.

Kawashima identified cultural factors as the most important cause of Japanese legal behavior. An orientation toward groups rather than individuals, a preference for consensus over conflict, and a propensity to feelings of shame and indirect communication in situations of tension were among his explanations for why rights assertion and legal conflict were limited. In short, according to Kawashima, Japanese culture, more specifically legal culture, accounts for the infrequency of rights assertion.

John Haley, a University of Washington law professor and Japanese legal expert, offered a powerful critique of Kawashima's ideas.[17] Haley presented a contrasting position that emphasized the power of structural factors in containing legal struggles. Strict controls on the number of people permitted to pass the bar examination, high filing fees when going to court, and a long, cumbersome legal process are just a few of the many structural features of the Japanese legal system that he said discouraged the use of the courts.

Despite their disagreement about the relative importance of culture and structure, however, Kawashima and Haley share a common framework; both accept that there is a fundamental difference between rights assertion in Japan and the West, and seek to explain *why*. Attempts to answer that question have consumed more energy and resulted in a greater range of publications than any other single issue on the agenda of sociolegal scholarship about Japan. With few exceptions, observers and laypersons interested in contemporary Japan have accepted the view that Japanese rarely assert rights, use courts, or engage in other law-related behavior.[18]

In fact, Japan already exhibits certain characteristics of rights talk that would agitate critics of rights in the United States. An article on subway renovations in Tokyo, for example, reported claims that "not providing bathrooms or making males and females share the same lavatories at public lavatories are violations of human rights."[19] A Korean resident of Japan, engaged in a long-standing battle regarding

the family registration system, contended that "a person's name is an important matter involving human rights, so it should be registered correctly . . . not to be correctly called by one's name is a violation of those rights."[20] A dispute over the decibel level of public address systems is portrayed as "the rights to free speech pitched against appeals to the right to peace and quiet."[21] Measured by a jurisprudential yardstick, the interests being asserted would probably not be considered legal "rights" by Japanese courts. Viewed as examples of how people in Japan articulate their grievances, however, they defy the conventional wisdom by illustrating an unexpectedly broad use of rights rhetoric in Japan.

This book rejects the sharp contrast between rights assertion in Japan and the United States. The contrast is revealing for what it suggests about the creation and reproduction of cultural norms and beliefs, but it fails to provide an accurate picture of the role of rights in either society. Borrowing insights from writing on the legal, historical, sociological, and political dimensions of rights, this analysis examines the function and power of rights in Japan, treating the invocation of rights as one important strategy that groups use to publicize their concerns, to mobilize supporters, and to seek policy change. Although the book is primarily concerned with an analysis of rights in Japan, it also contains an implicit critique of the tendency of scholars in the United States to treat American rights talk as singular. Without diminishing the importance of differences between rights talk in the United States and Japan, I suggest that there are intriguing similarities that have been consistently overlooked by observers in both nations.

Stuart Scheingold, with reference to civil rights struggles and other social movements in the United States, describes how rights are used to galvanize support by those seeking political change, and of the role played by courts in affirming the symbolic power of rights.[22] In Scheingold's account, it is a "myth" to treat rights as entitlements that are secured by litigation. Instead, in his view, rights are better suited to manipulation than realization – asserting rights is a way to influence the balance of political forces, which in turn may affect public policy.

Writing about the history of bioethics in the United States, for example, David Rothman describes a clash between the authority of the medical profession and the demands of patients.[23] In the climate of the 1960s and early 1970s, with the civil rights movement in full

bloom, patients were the oppressed. Rothman likens them to tenants in a housing project, to women, to the poor on welfare, powerless in the shadow of physician power. The movement toward patient empowerment, accompanied by great distrust and hostility, expressed itself through rights assertion and litigation. Indeed, it was sometimes criticized for overly exalting individual rights and infringing on the proper domain of medicine. Rothman understands the power of the rights-based approach, remarking on "the extraordinary power that the movement drew from the fact that it was building on this sense of patient as minority and then scaffolding onto it autonomy and all the ancillary issues of consent that go with it."[24]

In his study of the pay equity movement in the United States, Michael McCann elaborates Scheingold's approach to the politics of rights.[25] McCann argues that litigation and its attendant rights discourse may not lead directly to the implementation of new policies that recognize and protect rights, and he alludes to the ways in which rights may inhibit or constrain political action. But he does underscore their symbolic power in providing pay equity activists with a vocabulary and strategy around which to organize their movement, advertise their goals, and broadcast their victories. My study of Japan adopts a similar perspective; it is the use of rights as symbols and resources, in both litigation and in debates over public policy, that makes them an important element of change in Japanese law and society. The move from the jurisprudential to the socio-political context of rights, highlighting the myriad ways that rights are interwoven with the cultural and institutional characteristics of conflict, is the defining characteristic of the ritual of rights in Japan.

In exploring law and rights in Japan, it would be unwise to ignore the view that there is something inherent in Japanese culture that minimizes the importance of rights and the resonance of rights assertion. That claim, similar to but significantly more overstated than assertions about the American propensity for rights assertion, is part of a general tendency to think of the Japanese nation and people as singularly unique. Such beliefs fail, Miyoshi Masao writes, because "exclusivism and essentialism are ethnocentric and fantastic, and as such both dangerous and groundless."[26] Yet there is a persistence to the claim that Japan is "uniquely" unique, a circular argument that Japan is unique because Japanese culture is unique, and Japanese culture is unique because Japan is

unique, a corollary of which is that law, legal institutions, and legal behavior in Japan are also unique.

In an attempt to slay the "myth" of Japanese uniqueness, Stephen Reed writes that "[O]ver the years, most scholars, both Japanese and Western, have argued that Japan is a unique country, sui generis, a country unlike any other." He concludes that "[T]here is no need to create a special category for Japan. It is a normal country."[27] This conclusion is unfortunate. Just because Japan is not unique, it does not follow that Japan is like every other place, "normal," conforming to some sort of universal standard. Political economists studying Japan have made exactly that point.[28] They have argued, for example, that Japanese capitalism is not the same as capitalism in the United States, and does not conform to all of the assumptions made by neoclassical economists. While unsympathetic to the idea that Japanese culture is unique, these political economists demonstrate that Japan is different, particularly with respect to institutional arrangements. A central intellectual challenge in studying Japan is thus to identify the ways in which it is similar to and different from other places, rather than assuming exogenous difference that cannot be explained. Such an approach accepts that Japan is not so different that it is singularly "unique," nor so "normal" that it lacks differentiation. It is one on a spectrum of nations, all different in profound respects, and similar in others.

To consider Japan as singularly unique (that is, more different from all other nations than is any other nation) is to accept that it is virtually impossible for non-Japanese to make valid observations about Japanese legal, social, or political practices. Some have made such claims, and they are taken to task by Reed, Peter Dale, and others who make the case for a "normal" Japan and expose the ideological underpinnings of the "uniquely unique" perspectives.[29] But there are various aspects of Japan that are interestingly different from the United States and other nations, and it is necessary to find a way to talk and write about them without lapsing into language or conceptualization, that imply either uniqueness or sameness. The task of studying rights assertion in Japan partly depends upon an approach that recognizes relevant differences while identifying similarities.[30]

Although this study of rights is not an ethnography, it confronts a challenge analogous to that faced by anthropologists interested in describing and analyzing non-Western law. With roots in

Wittgenstein's arguments about the influence of Indo-European languages on conceptions of reality, anthropologists have debated the validity of using Western legal concepts to analyze non-Western systems. In *Justice and Judgment Among the Tiv*, for example, Paul Bohannan argues that it is a cardinal error to classify the practices of another system into categories derived from one's own society.[31] He writes: "It would be possible to consider *jir* which concerns 'releasing livestock' as cases of breach of contract. Little purpose would be served by so doing, for Tiv do not have a concept 'contract', and if we do so classify them, there is very grave danger of forgetting that we have applied the notion 'contract' from our own culture."[32] Bohannan's apprehensions are minimized by Max Gluckman, who is confident that Western legal language is adequate for analyzing non-Western systems. Gluckman comments: "Clearly we must not force tribal law into a Procrustean bed of Western jurisprudential concepts, but we may with care use those refined concepts for comparison and analysis."[33]

Those who reject the applicability of Western terms to non-Western systems stress the differences between legal systems, whereas those who stress their applicability emphasize similarities. Gluckman, for example, attacks Bohannan's rejection of the concept of "truth" in relation to Tiv legal proceedings, claiming:

> I would suggest that Bohannan has been misled in his comparison . . . other concepts in English deal with the same phenomena as he finds in Tivland: the white lie, tact, and discretion are but three. I wish to insist on this equivalence as against Bohannan, because he represents a school which stresses mainly the differences between African law and European law, and overlooks similarities. I think that on this point he has gone astray.[34]

Emphasizing the connection between reliance on Western terminology and an emphasis on similarities, Gluckman approvingly cites E. E. Evans-Pritchard's study of the Nuer: "The Nuer has a keen sense of personal dignity and rights. The notion of right, *cuong*, is strong. It is recognized that a man ought to obtain redress of certain wrongs."[35] Gluckman emphasizes similarities between systems, and uses Western terms to do so; Bohannan concentrates on differences, and is uncomfortable with using Western legal language.

Aside from vocabulary, there are other factors in the choice of whether to stress similarity or difference when analyzing legal systems

different from one's "native" system. Legal comparativists in the late nineteenth century, for example, emphasized the differences between legal systems and the loss of a common legal culture, a consequence of the codification of Continental law and the emphasis it placed on the distinctiveness of each nation's system.[36] As interest in formal legal rules and institutions gave way to a concern with their actual functioning, comparativists began to stress similarities between jurisdictions. More recent trends in comparative legal scholarship, according to Mary Ann Glendon, include a concern with the underlying principles of the law, as well as with the interaction between law and social change.[37] Both of these issues make room for the identification of similarities and differences.

This study is attentive to both the similarities and differences in rights assertion in Japan and the United States. Western terminology is used throughout the volume, but that should not obscure the fact that "rights" in Japan does not have the same meaning as "rights" in the United States, just as "rights" in the United States does not have the same meaning as "rights" in Germany. Thus, despite the presence of rights talk in many areas of Japanese social relations, rights talk in Japan can be distinguished from that in the United States. Countervailing forces like a strong state bureaucracy willing to intimidate or suppress rights assertion, institutional barriers that make using the courts difficult, conservative judges and a hierarchical court structure that moderates judicial innovation, statutes or administrative guidance that require conciliation, and a 2,000 year history, all shape the assertion and recognition of rights in Japan. These differences are real; but they do not justify the all too common claims about the insignificance of rights in Japan.

Reinhard Bendix was confronted with a related dilemma when studying economic development in Western and non-Western settings. Bendix connects the use of Western terms to the conclusion that societies do not progress or evolve in a universal pattern. He writes:

> As we turn today to problems of development in the non-Western world, we employ concepts that have a Western derivation. In so doing, we can proceed in one of two ways: by formulating a new set of categories applying to all societies, or by rethinking the categories familiar to us in view of the transformation and diversity of the Western experience itself. These studies adopt the second alternative in the

> belief that the insights gained in the past should not be discarded lightly.[38]

Once Bendix accepts that processes or results of development differ between nations, the use of Western terms and conceptual categories becomes problematic. Rather than jettison the categories and language that make up the Western analysis of modernization, he seeks to expand and improve upon them.

By applying this approach to Japan, it is possible to preserve the vocabulary developed to discuss political and legal practices in the West, and at the same time refine and revise the original concepts. Much of Chalmers Johnson's analysis of Japanese capitalism has followed such a course. In discussing the idea of ownership in Japan, for example, he refers to ownership and control as they developed in capitalist economies. Johnson claims that in Japan, the distinction between ownership, which depends upon the number of shares possessed by individuals or organizations, and control, vested in professional managers who run the business in the interests of owners, has become blurred. In Japan, he writes, "the managers are ascendant and the owners have become invisible to the point that the concept of ownership no longer means much of anything."[39] By using the term "ownership" to analyze Japanese corporations, Johnson uncovers a critical aspect of Japanese corporate governance, and increases our understanding of the limitations of neoclassical economic theory for explaining Japan. Johnson believes that capitalism in Japan can be understood, but only through detailed research on the history and development of Japanese institutions and organizations, not through the language and theories of Western economics or political science.

It would have been difficult for Johnson to describe the relationship between financial and managerial roles in Japan without using the Western vocabulary of ownership. Like ownership, the Western term "rights" has analytic power when applied to Japanese rights assertion; given the lack of alternatives, it is the best available conceptual tool for understanding the Japanese experience. Just as answering the question "are there political parties in Sierra Leone," for example, with a "yes" or "no" does little to increase understanding of social and political organization there, a simple answer to "are rights asserted in Japan" is not terribly informative. In both cases, there is a need to go beyond terminological argument, the

"yes there is, no there isn't" variety of scholarship. What is needed is a description of different attributes and experiences that are linked by a common quality, and a reasoned argument that the naming of that quality fits the data. I call the thread that connects the historical and contemporary Japanese material discussed herein "rights"; an examination of some of the attributes and experiences that it connects forms the body of this book.